

DRAFT

Article ## Zoning

To see if the Town will vote to amend the Eastham Zoning Bylaw, **SECTION 5.0 - ACCESSORY USES** by adding a new **SUBSECTION 5.3 ACCESSORY OUTDOOR SERVICE AREAS**

5.3 Accessory Outdoor Service Areas

5.3.1 Purpose

1. To support resiliency and adaptability of local businesses through a set of dedicated regulations for table service in an outdoor dining area;
2. To ensure safety and health standards for outdoor dining service areas;
3. To provide guidance for regulatory and design-related requirements for outdoor dining materials, equipment, and spaces.

5.3.2 Applicability

1. An Outdoor Dining Area that conforms to the requirements of the Eastham Zoning Bylaw shall be permitted as a by right accessory to an authorized principal restaurant.
2. Temporary, mobile/transient, or freestanding food service providers or vendors are not included under these regulations.
3. Outdoor Dining Areas of any size must comply with Eastham's Local Licensing Authority and State ABCC to extend the licensed premises for alcohol service into an Outdoor Dining Area.

5.3.3 Conditions and Requirements

1. Limitation
 - Only one Accessory Outdoor Dining Area is permitted per principal restaurant.
2. Occupancy
 - Addition of an Accessory Outdoor Dining Area may not exceed the total occupancy of the principal restaurant without prior review by the Building Commissioner, Board of Health or its agent, Fire Chief, and/or Chief of Police.

3. Design Standards

- An Accessory Outdoor Dining Area shall be clearly subordinate in use, size, and design to the principal restaurant to which it is accessory.
- An Outdoor Dining Area shall be designed so that, to the maximum extent feasible, its appearance remains visually consistent with the principal restaurant, including paint, décor, and any barriers or enclosures. Applicants may reference Eastham's "*Outdoor Dining Design Guidelines*" manual for all design requirements.

4. Accessibility

- Outdoor Dining Areas shall comply with architectural accessibility requirements as outlined in the rules and regulations of the Massachusetts Architectural Access Board (MAAB), Massachusetts' state building code 521 CMR.
- Applicants should reference Eastham's "*Outdoor Dining Design Guidelines*" for specific requirements related to accessible routes, surfaces, tables and seating.

5. Pedestrian Sidewalk Access

- An Outdoor Dining Area located on, or adjacent to, a sidewalk or pedestrian pathway must provide for pedestrian access to the sidewalk or pathway
- Applicants should reference Eastham's "*Outdoor Dining Design Guidelines*" manual for specific requirements related to pedestrian pathways.

6. Protective and Separation Barriers

- An Outdoor Dining Area located on, or adjacent to, motor vehicle space, such as a parking lot or street, must include barriers around the Outdoor Dining Area to protect against moving traffic.
- Applicants should reference Eastham's "*Outdoor Dining Design Guidelines*" manual for specific requirements related to protective and separation barriers.

7. Tents and Enclosures

- Any proposed use of a tent for the Outdoor Dining Area is subject to review and/or permitting by the Eastham Building Commissioner.

8. Heat and Ventilation

- Outdoor Dining Areas must provide for airflow.
- Any proposed use of heating equipment in an Outdoor Dining Area is subject to review and/or permitting by the Eastham Fire Department.
- Applicants should reference Eastham's "*Outdoor Dining Design Guidelines*" manual for specific requirements related to heat and ventilation.

9. Noise and Nuisance

- Complaints of noise and/or nuisance (*as defined by applicable sections of the Eastham General Bylaw and Eastham Board of Health Regulations*) related to an Outdoor Dining Area must be addressed by the Applicant in cooperation with the Eastham Police Department, Board of Health, Planning Board, and/or their designees.
- Failure to respond to complaints of noise and/or nuisance may result in revocation of the Outdoor Dining Area approval by the Planning Board.

5.3.4 Regulatory Review Requirements

MINOR SITE PLAN Planning Board Designee Approval	MAJOR SITE PLAN Planning Board Approval
<ul style="list-style-type: none">Accessory Outdoor Dining Service Area comprising up to 40% of the floor area occupied by the principal restaurant to which the Outdoor Dining Area is an accessory OR up to 50% of the lot area occupied by the principal restaurant.	<ul style="list-style-type: none">Accessory Outdoor Dining Service Area of any size that proposes reductions in parking to below the minimum requirement.Accessory Outdoor Dining Service Area of any size that proposes changes to site access, patterns of vehicular movement, or interconnection(s) between adjacent lots

5.3.5 Application Filing for Accessory Outdoor Dining Service Area

1. The required fee, as listed in the fee schedule of the Planning Board Regulations shall accompany each application.
2. The applicant will bear the cost of any outside planning or engineering consultant requested by the Planning Board or its designee.
3. A complete filing for Accessory Outdoor Dining Site Plan Review shall include the following:
 1. A completed checklist showing compliance with the requirements of section 5.3.2 and compliance with the Eastham “*Outdoor Dining Design Guidelines*” manual.
 2. A completed application for creation of an Accessory Outdoor Dining Area.
 3. Certificate of Occupancy for the principal restaurant. If the applicant does not own the property where the Outdoor Dining Area is proposed, a letter is required from the property owner granting the right to utilize the space.
 4. A letter of zoning determination from the Building Commissioner.
 5. Documentation of a current Business License and most recent annual inspection(s) from the Town of Eastham.
 6. Health and Safety Plan including the following information:
 - Description of proposed service (*including staffing levels, days of the week, hours/months of operation*)
 - Overview of how the Outdoor Dining Area will be separated from any non-licensed area and supervised
 - Structures and/or barriers separating patrons from traffic
 - ADA accessibility
 - Maintenance and storage plan for outdoor dining components, such as tables and chairs.
 7. A site plan showing the proposed Outdoor Dining Area. The applicant may prepare the site plan. However, the Planning Board or its designee may require additional information prepared by a licensed professional if it is determined that such information is necessary to make an informed decision.

Required Site Plan Contents:

- Proposed Outdoor Dining Area, including total square footage;
- Location and boundaries of the lot and any adjacent streets or parking areas;

- Principal restaurant location and square footage;
- Location and dimensions of accessible routes to and from the principal restaurant and Outdoor Dining Area;
- Location and dimensions of adjacent sidewalks or pedestrian pathways;
- Location and number of tables and chairs, with location and dimensions of accessible routes to access;
- Location of protective barriers;
- Location of handwashing stations or sinks;
- Location of bathrooms, with location and dimensions of accessible routes to access;
- Location of any other components of the Outdoor Dining Area, including refuse containers, benches, mechanical components, etc.

5.3.6 Minor Site Plan Approval

Following a complete filing by the applicant, an administrative review and site visit will be conducted to determine compliance with all regulatory and design standards. Review and approval of Accessory Outdoor Dining Areas under Minor Site Plan review shall be administrative, carried out by a designee of the Planning Board without a public hearing. A written determination for Minor Site Plan Approval shall be issued upon a determination that all of the requirements listed in subsection 5.3.2 and 5.3.5 have been satisfied.

5.3.7 Minor Site Plan Decision

The Planning Board or its designee, after completing review of the minor site plan, shall file a written decision no later than 45 days after receipt of a completed application in the office of the Town Clerk, and notify the applicant of the decision. The required time limits for the filing of such decision may be extended by written agreement of the applicant and the designee, and a copy of such agreement must be filed in the office of the Town Clerk. Failure by the designee to act in the 45-day period shall be considered approval of the minor site plan. The applicant who seeks such approval because of the failure of the designee to act in the time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 45 days or extended time.

5.3.8 Appeal of Minor Site Plan Decision

1. Any person aggrieved by a decision of the designee on a minor site plan may appeal said decision to the Town of Eastham Planning Board. Such appeal must be filed with the Board within 20 days of the filing of the designee's decision with the Town Clerk.
2. Any person aggrieved by a decision of the Planning Board on a Minor Site Plan may appeal said decision to the Town of Eastham Zoning Board of Appeals. Such appeal must be filed with the Zoning Board of Appeals within 20 days of the filing of the Planning Board's decision with the Town Clerk, and, only thereafter to a court of competent jurisdiction under MGL c. 40A, Section 17.

5.3.9 Major Site Plan Approval

Major Site Plan approval shall be granted upon a favorable vote of a majority of the Planning Board upon a determination that all of the requirements listed in Section 5.3.2 and 5.3.5 have been satisfied and a public hearing shall be required.

5.3.10 Major Site Plan Decision

The Planning Board, under the standards set forth here, shall carry out review and approval of Accessory Outdoor Dining Areas under Major Site Plan review.

1. The Planning Board shall hold a public hearing including notice to all abutters, within sixty-five (65) days of receipt of the completed application and shall make a decision within ninety (90) days of the opening of the public hearing.
2. The required time limits for the filing of such decision may be extended by written agreement of the applicant and the designee, and a copy of such agreement must be filed in the office of the Town Clerk.
3. Failure by the Planning Board to act in the sixty-five day period is considered approval of the Major Site Plan. The applicant who seeks such approval because of the failure of the designee to act in the time prescribed must notify the Town Clerk, in writing, within 14 days from the expiration of said 65 days or extended time.

5.3.11 Appeal of Major Site Plan Decision

Any person aggrieved by the decision of the Planning Board on a Major Site Plan may appeal said decision to the Town of Eastham Zoning Board of Appeals within 20 days of filing the decision with the Town Clerk, and only thereafter to a court of competent jurisdiction under MGL c. 40A, Section 17.

5.3.12 Disapproval

The Planning Board or its designee in the case of a Minor Site Plan review may deny approval of an application for Accessory Outdoor Dining Service Area on the grounds that the requirements listed in Section 5.3.2 and 5.3.3.1 have not been satisfied, and/or the application materials or plan contents required under this subsection 5.3.5 have not been submitted and/or were not submitted at the appropriate time.

5.3.13 Conditions

In granting Major Site Plan Review Approval, the Planning Board or in the case of Minor Site Plan, its designee may impose reasonable conditions as may be necessary or appropriate to:

- Enforce compliance with applicable requirements of the Eastham Zoning Bylaw.
- Protect the health, safety, convenience, and general welfare of the inhabitants of the Town of Eastham.
- Among its conditions, the Planning Board or in the case of Minor Site Plan, its designee, may require the provision of adequate security by the applicant, in such form and amount as may be determined. This security is to ensure the satisfactory completion of all improvements required by site plan approval. The Planning Board may also require a formal commitment to future compliance, including a

monitoring program post-permit issuance for compliance purposes for a time specified in the site plan approval, including restrictive covenants, which shall be recorded before any building permit issues.

5.3.14 Approval Lapse

Minor and/or major Site Plan Approval shall lapse three (3) years from the date of issuance unless construction or operation under the approval has commenced.

or take any action relative thereto.

By Eastham Planning Board

Summary:

Pandemic-related occupancy restrictions and other changes, while necessary for public health and safety have affected Eastham's local business community. In 2020 and 2021, The Town worked to support local restaurants' ability to adapt and respond to ever-changing business conditions by offering an expedited local permit for outdoor dining, made possible through special State authorization. This State authorization for temporary outdoor dining permits expired in April, leaving current permit holders with reduced options for continuing to use the outdoor dining areas they created under the temporary permit. The proposed regulatory amendments provide a streamlined regulatory process for local restaurants to retain or add an Outdoor Dining Service Area as an accessory use to their principal business - while also complying with local and state regulatory requirements for health, public safety, and zoning.

BOARD OF SELECTMEN RECOMMENDATION:

FINANCE COMMITTEE RECOMMENDATION:

PLANNING BOARD RECOMMENDATION:

(2/3 Majority vote required)